SUPREME COURT, U. S.

FILED

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NO. 541

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

MISSISSIPPI-ALABAMA STATE FAIR ..... Petitioner

VS.

MISSISSIPPI STATE TAX COMMISSION ..... Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

BRIEF FOR RESPONDENT IN OPPOSITION

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Mississippi State Tax Commission, Respondent, by and through John E. Stone, its attorney, files this brief in opposition to the Petition for Writ of Certiorari to the Supreme Court of the State of Mississippi, and Respondent prays that the said Petition will be dismissed by this Court.

OPINION BELOW

The opinion of the Supreme Court of Mississippi rendered in this cause is reported at 222 So. 2d 664 (Miss.), and is set forth in its entirety as Appendix I to the Petition for Writ of Certiorari filed herein.

JURISDICTION

The facts set forth in the Petition for Writ of Certiorari filed in this cause are inadequate to vest jurisdiction in this Court under 28 U.S.C. 1257 (3). Petitioner

does not qualify for a review on writ of certiorari under Supreme Court Rule 19(a).

QUESTION PRESENTED

The question presented in this cause is whether the decision of the Mississippi Supreme Court denied to petitioner equal protection of law and due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

STATUTES INVOLVED

There are three statutes which must be considered in order to understand the opinion of the Supreme Court of Mississippi in the present cause:

1) Section 9088, Mississippi Code of 1942 (Appendix A to this Brief), the pertinent part of which states that "No tax shall be levied or collected upon . . . admissions to county, state or community fairs. . ."

2) Section 9080, Mississippi Code of 1942 (Appendix B to this Brief), the pertinent part of which states that "The taxpayer shall have the right of appeal from such assessment as in cases of revocation of permit."

3) Section 9075, Mississippi Code of 1942 (Appendix C to this Brief), the pertinent part of which states that ". . . such appeal shall be taken in the form of objections and exceptions to the order of the Commission, which shall be accompanied by the records of the Commission, and a transcript of the testimony before said Commission, in the case, which shall constitute the record in the circuit court."

STATEMENT OF THE CASE

Respondent assessed an amusement tax against petitioner, based upon petitioner's operation of a fair dur-

ing the years 1965 and 1966. Petitioner appealed the assessment, claiming an exemption as a "community fair" under Section 9082, Mississippi Code of 1942. By agreement between the parties (R. 5), no transcript was made of the hearing held before the Mississippi State Tax Commission. An order was entered by the Commission affirming the assessment (R. 6), and petitioner appealed to the circuit court. Pursuant to the aforesaid agreement, a trial *de novo* was held in circuit court, a transcript was made, and judgment was entered reversing the Commission order (R. 126). Respondent appealed to the Mississippi Supreme Court, whereupon the Commission order was reinstated and affirmed.

ARGUMENT

In respect to the construction of state statutes, a state court's interpretation is nonreviewable by the United States Supreme Court. The decision of the Mississippi Supreme Court in the case of *Mississippi State Tax Commission v. Mississippi-Alabama State Fair,* 222 So. 2d 664, decided two points of Mississippi law:

1) Section 9075, Mississippi Code of 1942 (Appendix C to the Brief) does not allow the litigants, by agreement, to confer jurisdiction upon the circuit Court to try a cause *de novo;* and

2) The Mississippi-Alabama State Fair is not entitled to an exemption under Section 9083, Mississippi Code of 1942 (Appendix A to the Brief).

Respondent recognizes that its agreement with petitioner to a trial *de novo* in circuit court has confused an otherwise simple question of whether or not petitioner is a community fair. However, in view of the plain provisions of Section 9075, Mississippi Code of 1942,

it was not a denial of any rights of petitioner for the Mississippi Supreme Court to find that the parties had no power to confer jurisdiction upon the circuit court to try the cause anew.

Petitioner's argument that the Mississippi Supreme Court failed to properly review the Order of the Mississippi State Tax Commission is without merit. The opinion rendered by the Mississippi Supreme Court clearly shows that the Order of the Commission was reviewed by the Court in the light of the facts presented before the Commission. See *Mississippi State Tax Commission vs. Mississippi-Alabama State Fair,* 222 So. 2d 664, 667, wherein it is stated:

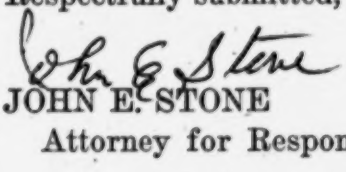
> "1. Out of an abundance of caution, however-and in view of the statements in both briefs that the testimony in the Circuit Court was in effect the same as that had before the Commission — we have examined the entire transcribed record, and we are convinced that the Tax Commission acted properly in making the assessment. We are convinced that the taxpayer, Mississippi-Alabama State Fair, is not entitled to the exemption claimed under the authority of Section 9083, Mississippi Code of 1942 Annotated (Supp. 1969)."

Petitioner's argument that a question of the future of due process in the field of administrative law and procedure in Mississippi is presented by the effect of the opinion in this cause is incorrect. In the recent case of *Tenneco, Inc., v. Barr,* 224 So. 2d 208, the Mississippi Supreme Court pointed out that there are various methods of appeal from orders of the State Tax Commission, but in all cases, the appeal is based upon the statutory provision granting the said appeal.

CONCLUSION

Petitioner is asking this Court to order a remand of the cause to the Mississippi State Tax Commission in order that a transcript of the testimony before the Commission be made. Implied in petitioner's request is the understanding that the whole matter will again come before the Mississippi Supreme Court for a determination of whether the Mississippi-Alabama State Fair is a community fair within the meaning of Section 9083, Mississippi Code of 1942. Respondent believes that this question is foreclosed by the determination of the Mississippi Court in the subject case.

Respectfully submitted,



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CERTIFICATE

I, John E. Stone, one of the attorneys for Respondent in this cause, certify that I have this day mailed, postage prepaid to Honorable Thomas Y. Minniece, P. O. Box 1563, Meridian, Mississippi, attorney of record for Petitioner, a true copy of the above and foregoing Brief.

This the 26 day of September, 1969.

John E. Stone

JOHN E. STONE
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Jackson, Mississippi

Attorney for Respondent

APPENDIX A

Section 9083, Mississippi Code of 1942:

EXEMPTIONS. No tax shall be levied or collected upon any admissions charged at any place of amusement operated solely for the benefit of any religious or charitable organization where the proceeds of such admissions do not inure to any one or more individuals; nor shall such tax apply to admissions charged at any athletic games or contests between high schools or grammar schools; nor to admissions to county, state or community fairs, or entertainments presented in community homes or houses which are publicly owned and controlled, and the proceeds of which do not inure to any individual or individuals. The exemptions allowed in this section shall not apply to athletic games or contests between universities or colleges, nor to amusements in which professional performers or promoters are employed, or compensated out of the proceeds of such admissions received, provided, however, that no tax shall be levied or collected upon any admissions charged for the performance of symphony orchestras, operas, vocal or instrumental artists in which professional or amateur performers are compensated out of the proceeds of such admissions, when sponsored by local music or charity associations or amateur dramatic performances or professional dramatic productions when sponsored by a children's dramatic association, where no dividends are declared, profits received, nor any salary or compensation paid to any of the members of such associations, or to any person for procuring or producing such performance.

APPENDIX B

Section 9080, Mississippi Code of 1942:

ERRORS CORRECTED BY TAX COMMISSION. The Tax Commission shall correct errors in returns, refund as provided in Chapter 127, Laws of 1944 [§9979], or re-assess where errors occur, and upon notice from the Tax Commission the taxpayer shall pay the re-assessment within ten (10) days, and if not then paid the Commission shall declare the tax due, add a penalty of ten per centum (10%) to the amount assessed, give notice of same and if such tax and penalty is not paid to the Commission on or before the tenth (10th) day after mailing such notice, the Commission shall proceed to collect the same as provided in the preceding section hereof. The taxpayer shall have the right of appeal from such assessment as in cases of revocation of permit.

APPENDIX C

Section 9075, Mississippi Code of 1942:

RIGHT OF APPEAL. If upon such hearing the Commission shall decline to rescind its act of revocation of the permit, the person aggrieved may, within ten days of the date of such hearing appeal to the circuit court of the county where such place of amusement was conducted; such appeal shall be taken in the form of objections and exceptions to the order of the Commission, which shall be accompanied by the records of the Commission, and a transcript of the testimony before said Commission, in the case, which shall constitute the record in the circuit court. The appeal shall be granted by the Commission upon the filing of a bond by the appellant, with sufficient sureties in a penal sum sufficient to cover all taxes and penalties in arrear, and all taxes to accrue pending a final hearing and all costs; and the circuit judge shall hear the appeal in vacation on written demand of the party appealing, after the said party shall have given five days notice in writing to all parties concerned.